

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

LINKSMART WIRELESS  
TECHNOLOGY, LLC

vs.

T-MOBILE USA, INC., ET AL.

§  
§  
§  
§  
§  
§

CASE NO. 2:08-CV-264-DF-CE

**REPORT AND RECOMMENDATION**

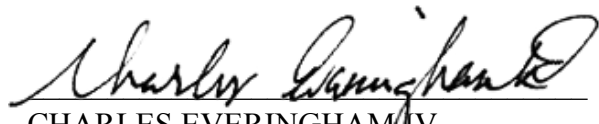
The above-referenced case was referred to the undersigned United States Magistrate Judge for pre-trial purposes in accordance with 28 U.S.C. § 636. Pending before the court is the defendants' motion for partial summary judgment of invalidity for indefiniteness (Dkt. No. 468). The defendants contend that claim 15, and its dependent claims, of U.S. Patent No. 6,779,118 ("the 118 patent") are invalid because they are indefinite. According to the defendants, the following two terms are insolubly ambiguous and render claim 15 indefinite: "location the user access" and "to control passing between the user and a public network."

For the reasons presented in the court's claim construction opinion (Dkt. No. 492), the undersigned recommends GRANTING in part the defendants' motion for summary judgment. The claim construction opinion held that "location the user access" is insolubly ambiguous, and thus claim 15 is indefinite (Dkt. No. 492, at 19). The undersigned therefore recommends that the court grant summary judgment that claims 15, 16, 17, 19, 22, and 23 of the '118 patent are indefinite and invalid under 35 U.S.C. § 112, ¶ 2.

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this report within fourteen days after being served with a copy shall bar that party from de novo review by the district judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings, and legal

conclusions accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

SIGNED this 1st day of July, 2010.



CHARLES EVERINGHAM IV  
UNITED STATES MAGISTRATE JUDGE